

in nearly all federal benefits programs. Several of the federal benefits programs that constitute qualifying programs for Lifeline, including SNAP, Supplemental Security Income (SSI), the Federal Housing Assistance Program, and the Low-Income Home Energy Assistance Program (LIHEAP), require consumers to present several forms of documentation to enroll in the benefit program.²⁸⁹ Moreover, as noted above, GAO found that a number of states already require that consumers initiating Lifeline service provide documentation of enrollment in a qualifying program.²⁹⁰ For example, Missouri, Texas, and Nebraska currently require proof of participation in a qualifying program to establish program-based eligibility for Lifeline.²⁹¹ Thus, given that many consumers are already subject to such requirements, it is not unreasonable to extend the applicability of those requirements to cover ETCs in all states.

106. Some commenters expressed concern that a rule requiring consumers to show documentation of eligibility upon enrollment will discourage program enrollment because not all consumers have documentation to prove eligibility, and many low-income consumers lack access to technology (such as fax machines, copiers, and scanners) that would assist them in submitting documentation to ETCs.²⁹² For example, one commenter asserts that Nebraska, which requires consumers to provide documentation of participation in a qualifying federal program to establish eligibility for Lifeline, has a program enrollment rate below the national average.²⁹³ We are not

²⁸⁹ See 7 U.S.C. § 2020(e)(3); 7 C.F.R. § 273.2(f)(1)(i), (4), (5) (verification of eligibility for SNAP); Social Security Online, Nutrition Assistance Programs, <http://www.ssa.gov/pubs/10100.html#apply> (last visited Feb. 2, 2012); Social Security Online, Supplemental Security Income, <http://www.ssa.gov/pubs/11000.html#part4> (last visited Feb. 2, 2012); HUD's Public Housing Program, http://portal.hud.gov/hudportal/HUD?src=/topics/rental_assistance/phprog (last visited Feb. 2, 2012); U.S. Department of Health & Human Services, Office of Community Services, Low-Income Home Energy Assistance Program (LIHEAP), <http://www.acf.hhs.gov/programs/ocs/liheap/brochure/brochure.html> (last visited Feb. 2, 2012); Letter from Cheryl A. Leanza, Policy Advisor, United Church of Christ, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 1-2 (stating that most anti-poverty programs that are qualifying programs for Lifeline require consumers to provide documentation of income, either a pay stub or by getting their employer to complete a verification form) (LCCHR Nov. 21 *ex parte* Letter); see also USDA, Food & Nutrition Service, WIC Prescreening Tool, <https://stars.fns.usda.gov/wps/pages/start.jsf> (last visited Feb. 2, 2012).

²⁹⁰ See *supra* para 94.

²⁹¹ See, e.g., MO PSC Comments at 3-4; Solix Comments at 3; NE PSC Comments at 12-13. Other examples of states that require documentation of enrollment in a qualifying program include Pennsylvania and South Carolina. See South Carolina Lifeline and Link-Up Telephone Assistance Application, available at <http://www.regulatorystaff.sc.gov/imagesUpload/LifelineApplication.pdf>; Letter from Joseph K. Witmer, Esq., Assistant Counsel, Pennsylvania PUC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, (filed July 7, 2011) (Pennsylvania PUC July 7 *ex parte* Letter).

²⁹² See, e.g., COMPTTEL Comments at 19-20; Consumer Groups Comments at 24-25; GCI Comments at 48; Keep USF Fair Comments at 2; MAG-Net Comments at 20; NASUCA Reply Comments at 13-14; Nexus Reply Comments at 11; USTelecom Comments at 6; Rainbow PUSH Comments at 1; OpenAccess Comments at 4; TracFone Comments at 28-29; YourTel Comments at 12-13; State of Alaska Reply Comments at 3; see also Letter from Commissioner Deborah Taylor-Tate, Federal Communications Commission, to Julius Genachowski, Chairman, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 2 (filed Aug. 1, 2011) (Comm'r Tate Aug. 1 *ex parte* Letter); Letter from Mitchell F. Brecher, Counsel, TracFone Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 2 (July 28, 2011) (TracFone July 28 *ex parte* Letter); TracFone Aug. 3 *ex parte* Letter; Emerios Nov. 3 *ex parte* Letter at 4; Letter from George Korn, Advisor to Rev. Jesse L. Jackson, Sr., Rainbow PUSH, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 1 (filed Dec. 9, 2011) (Rainbow PUSH Dec. 9 *ex parte* Letter).

²⁹³ TracFone July 28 *ex parte* Letter at 2; see also Emerios Nov. 3 *ex parte* Letter at 4 (stating that consumers who are required to provide documentation of program-based eligibility may opt not to complete the Lifeline sign-up process).

persuaded that requiring documentation of program eligibility will unduly reduce enrollment in Lifeline or otherwise significantly hinder low-income consumers from obtaining needed telephone services. Generally, consumers who qualify for Lifeline under program-based criteria receive documentation evidencing their participation in a qualifying program.²⁹⁴ Further, as Chart 2, below, demonstrates, Lifeline subscriber data also demonstrates that program enrollment continues to increase significantly in states that currently require consumers to provide documentation of program-based eligibility, such as Kansas.²⁹⁵ Nonetheless, to the extent that the balance we strike here is more burdensome for consumers in those states that currently allow self-certification, we anticipate that the documentation requirement will be temporary until eligibility can be better addressed through a database solution.

Chart 2

Comparison of Lifeline Growth Rate in States Requiring Documentation of Program Eligibility Versus States Permitting Self-Certification of Program Eligibility²⁹⁶

State	Requirement	Compound Annual Growth Rate (2008 - 2011)	Eligible HH (in thousands) (2010)	Take Rate* (2011)
KS	Documentation	28%	229	25%
OR	Database	4%	278	19%
MD	Self-certification	250%	325	75%
LA	Self-certification	155%	518	121%

²⁹⁴ For example, program participants may receive an identification card or number (Medicaid, SNAP), an electronic benefit transfer card (SNAP), a voucher (Federal Public Housing Assistance (Section 8)), a notice of eligibility or other written decision letter (SSI, LIHEAP, Federal National School Lunch, TANF, Food Distribution Program on Indian Reservations, BIA General Assistance). See, e.g., 24 C.F.R. § 982.302(a) (Section 8 Issuance of Voucher); 7 C.F.R. § 245.6(C)(6) (National School Lunch Program Notice of Approval); 47 C.F.R. §§ 274.1, 274.2 (setting out how state agencies may issue SNAP benefits to households using an Electronic Benefit Transfer system); LCCHR Nov. 21 *ex parte* Letter (stating that “most federal benefits programs provide an award letter or notice of eligibility when an individual or household is deemed eligible and also a card to help maneuver in the system”); USDA, Supplemental Nutrition Assistance, Electronic Benefit Transfer, <http://www.fns.usda.gov/snap/ebt/> (last visited Feb. 2, 2012); Social Security Online, Glossary, Appeal (Appeal Rights), <http://www.ssa.gov/glossary.htm> (last visited Feb. 2, 2012); USDA, FNS HANDBOOK 501 FOR FDPIR 5-3, <http://www.fns.usda.gov/fdd/hdbks-instruct/FNS501/Chap05-Certification.pdf#xml=http://65.216.150.153/texis/search/pdfhi.txt?query=handbook+501&pr=FNS&prox=page&roder=500&rprox=500&rdfreq=500&rwfreq=500&rlead=500&rdepth=0&sufs=0&order=r&cq=&id=4ea87d7c39>; U.S. Department of the Interior, Bureau of Indian Affairs, Application for Financial Assistance and Social Services Instructions, at 17, <http://www.bia.gov/idc/groups/mywcsp/documents/collection/idc014233.pdf>.

²⁹⁵ For instance, the number of Lifeline subscribers in Kansas grew from approximately 26,737 in 2008 to 54,680 (annualized based on 11 months subscribers data) in 2011. That is, the number of Lifeline subscribers in Kansas increased at a 28 percent Compound Annual Growth Rate (CAGR) between 2008 and 2011. See *USAC Low Income Support and Subscriber Claims Letter* at 2.

²⁹⁶ See *USAC Low Income Support and Subscriber Claims Letter* at 2.

107. As the record demonstrates, state agencies and non-profit organizations often play an important role in facilitating access to benefits for low-income individuals.²⁹⁷ State agencies and non-profit organizations may be able to assist low-income consumers if low-income consumers do not have the ability to transmit documentation to their chosen ETC. Additionally, some ETCs enroll consumers using a variety of methods, including at retail stores (*i.e.*, in person). We encourage ETCs to provide consumers with multiple options for presenting documentation of eligibility, including in-person and by mail.

108. Some commenters responding to the *Lifeline and Link Up NPRM* voice concerns about the costs ETCs will incur in implementing a system to collect and verify consumer documentation of program-based eligibility.²⁹⁸ We acknowledge that compliance with the rule we adopt here will involve some administrative costs for ETCs; however, we conclude that those costs are outweighed by the significant benefits gained by protecting the Fund from waste, fraud, and abuse.²⁹⁹ As noted above, we estimate that up to 15 percent of current Lifeline subscribers may be ineligible for the program, potentially representing as much as 360 million dollars of support per year.³⁰⁰ We expect that a rule requiring ETCs to obtain documentation of program participation from new Lifeline applicants, in conjunction with our efforts to implement a Lifeline database,³⁰¹ will enable the Commission to recapture those funds and prevent unbridled future growth in the Fund. The resulting cost savings will in turn benefit those consumers who contribute to the Universal Service Fund, new qualifying low-income consumers, and our goal to modernize the program for a broadband future. Further, while we will require consumers to provide documentation of program- and income-eligibility to ETCs at enrollment, consumers will no longer be required to provide such documentation as part of the annual verification process in federal default states.³⁰² Moreover, consumers will not need to demonstrate eligibility at enrollment (or annually) once that function is addressed through a database. We expect that these changes will reduce the burdens on both consumers and ETCs.

109. Other commenters state that a rule requiring ETCs to verify documentation of consumers' program eligibility would raise privacy concerns.³⁰³ As noted above, without accessing a state or federal eligibility database or collecting documentation of consumer eligibility for Lifeline, ETCs cannot reliably confirm that a consumer is eligible for Lifeline. We believe that the privacy concerns raised in the record

²⁹⁷ See, e.g., MFY Legal Services Reply Comments at 1; Open Access Comments at 2, 7-8; Consumer Groups Comments at 2-5; Letter from Martha Deaver, Executive Director, Arkansas Advocates for Nursing Home Residents, to Julius Genachowski, Chairman, Federal Communications Commission, WC Dkt. No. 11-42 *et al.* (filed Apr. 13, 2011).

²⁹⁸ See, e.g., AT&T Reply Comments at 15-16; USTelecom Comments at 6; MITS Reply Comments at 7; Sprint Reply Comments at 11; Consumer Cellular Comments at 20; Cox Comments at 4; Emerios Nov. 3 *ex parte* Letter at 4-5.

²⁹⁹ Immediate adoption of a rule requiring documentation of program-based eligibility will enable the Commission to realize cost savings in the near term, which can in turn be used to, among other things, fund efforts to modernize the Lifeline program. See *infra* section IX.B (Support for Broadband).

³⁰⁰ See *supra* para. 102. Assuming that the Low-Income program provides an estimated \$2.4 billion in support in 2012, see *infra* section X (Managing the Size of the Low-Income Fund), 360 million represents fifteen percent of that amount.

³⁰¹ See *infra* Sections VII.A (National Lifeline Accountability Database) and XIII.A (Establishing an Eligibility Database).

³⁰² See *infra* section VI.C.2.b (Annual Re-certification of Consumer Eligibility).

³⁰³ See, e.g., AT&T Reply Comments at 15-16; Rainbow PUSH Comments at 1; CTIA Comments at 21-22; USTelecom Comments at 6.

are minimal in light of the fact that ETCs in several states currently collect documentation of program-based eligibility and the Commission is unaware of abuses resulting from that system. Thus, when balancing the benefits with the potential burdens of such a rule, we conclude such concerns do not outweigh the significant benefits of adopting such a rule.

110. One commenter recommends that the Commission require carriers themselves, rather than their agents or representatives, to review all documentation of eligibility.³⁰⁴ The commenter notes that, for example, the Indiana Utility Regulatory Commission has procedures in place requiring carriers to deal directly with consumers to reduce incentives for illicit third party behavior.³⁰⁵ We do not find it necessary to adopt such a rule at this time. The Commission has consistently found that “[l]icensees and other Commission regulatees are responsible for the acts and omissions of their employees and independent contractors,” and has held the regulated party responsible for violations of the Commission’s rules committed by agents.³⁰⁶ Thus, ETCs may permit agents or representatives to review documentation of consumer program eligibility for Lifeline. However, the ETC remains liable for ensuring the agent or representative’s compliance with the Lifeline program rules.

111. *Content of Consumer Eligibility Certifications.* We next amend the Commission’s rules to require consumers to make certifications concerning their eligibility for Lifeline when initially enrolling in the Lifeline program. All ETCs must also obtain a signed certification from the consumer that complies with section 54.410 of our rules.³⁰⁷ No later than June 1, 2012, ETCs in all states (or the state Lifeline program administrator, where applicable) must update their Lifeline certification processes to enable consumers to comply with the requirements listed below.³⁰⁸ ETCs will also be required to verify each subscriber’s compliance with the Lifeline eligibility rules annually by requiring each subscriber to submit an annual re-certification complying with the requirements described below.³⁰⁹ As discussed below, we will permit interactive voice response systems to be used for both enrollment and

³⁰⁴ Letter from Kathleen O’Brien Ham, Vice President, Federal Regulatory Affairs, T-Mobile, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 3 (filed Dec. 16, 2011) (T-Mobile Dec. 16 *ex parte* Letter).

³⁰⁵ *Id.*; see *Federal-State Joint Board on Universal Service; Petition of TracFone Wireless for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*; Compliance Plan, CC Dkt. No. 96-45, at 15 (filed Oct. 11, 2005) (agreeing that TracFone will have direct contact with all Lifeline applicants, including processing of the applicants’ applications); *Federal-State Joint Board on Universal Service; Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A); Petition for Designation as an Eligible Telecommunications Carrier in the State of New York et. al.*, Compliance Plan, CC Dkt. No. 96-45, at 7-8 (same) (filed Apr. 3, 2009).

³⁰⁶ See, e.g., *Bethune-Cookman College, Inc.*, File Number EB-08-TP-0406, Forfeiture Order, 24 FCC Rcd. 4513, 4515, para. 8 (Enf. Bur. 2009) (citing *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863, -64, para. 7 (2002)); *MTD, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 34 (1991) (holding that a company’s reliance on an independent contractor to construct a tower in compliance of FCC rules does not excuse that company from a forfeiture); *Wagenvoort Broadcasting Co.*, Memorandum Opinion and Order, 35 FCC 2d 361 (1972) (holding a licensee responsible for violations of FCC rules despite its reliance on a consulting engineer); *Petracom of Joplin, L.L.C.*, 19 FCC Rcd 6248 (Enf. Bur. 2004) (holding a licensee liable for its employee’s failure to conduct weekly EAS tests and to maintain the “issues/programs” list).

³⁰⁷ In states that determine subscriber’s eligibility for Lifeline services, the state administrator should provide prospective subscribers with the certification forms, collect completed forms from subscribers, and provide them to ETCs. ETCs should update their annual certification forms to conform to the list of requirements provided in Appendix B.

³⁰⁸ ETCs may choose to use a single document for their Lifeline program application and certification form.

³⁰⁹ See discussion *infra* section VI.C.2.b (Annual Re-Certification of Consumer Eligibility).

annual recertifications, as well as text messages for annual recertifications.³¹⁰

112. We do not anticipate that these requirements will impose unreasonable burdens on low-income consumers, many of whom already provide certifications as part of the Lifeline enrollment process.³¹¹ Further, the requirements we adopt today will help to educate low-income consumers about the Lifeline program rules and remind them of the actions that are necessary to ensure their compliance. In this way, we will prevent consumers from being de-enrolled from Lifeline due to lack of awareness of program rules.

113. First, where a subscriber's eligibility cannot be determined through a database, consistent with the rule we adopt above requiring documentation of program-based eligibility for Lifeline, we amend section 54.410 of the Commission's rules to require ETCs (or states, where applicable) to obtain each consumer's signature on a document³¹² certifying under penalty of perjury that the consumer's household receives benefits from a qualifying state or federal assistance program, specifying the program in which the consumer's household is enrolled, or has income at or below 135 percent of the FPG, and that the consumer, if required to do so, presented documentation that accurately represents the consumer's household income or participation in such program. Consumers must provide this certification to the ETC (or state agency or third-party administrator, where applicable) upon enrolling in Lifeline and annually thereafter.

114. Second, consistent with the proposal in the *Lifeline and Link Up NPRM*, we amend section 54.410 of our rules to require that a consumer notify its ETC within 30 days if he or she no longer qualifies for Lifeline service. Specifically, a consumer must notify its telephone service provider within 30 days if (1) the consumer ceases to participate in a federal or state qualifying program or programs or the consumer's annual household income exceeds 135 percent of the FPG (if that is the criterion by which that consumer qualified for Lifeline); (2) the consumer is receiving more than one Lifeline-supported service; or (3) the consumer, for any other reason, no longer satisfies the criteria for receiving Lifeline support.³¹³ ETCs (or states where, applicable) must set forth the notification requirement on their program certification form. The notification requirement must be explained in clear, easily understandable language. Additionally, prior to enrolling in Lifeline, consumers must attest under penalty of perjury that they understand the notification requirement, and that they may be subject to penalties if they fail to follow this requirement. Any consumer found to be ineligible for Lifeline support will be de-enrolled from the program pursuant to the procedures set forth in section 54.405(e) of the Commission's rules.³¹⁴ Currently, consumers who are no longer eligible for Lifeline support may lack the incentive to

³¹⁰ See *infra* V.I.E (Electronic Signature).

³¹¹ See, e.g., *Telecommunications Carriers Eligible for Universal Service Support; NTCH, Inc. Petition for Forbearance from 47 U.S.C. § 214(e)(5) and 47 C.F.R. § 54.207(b); Cricket Communications, Inc. Petition for Forbearance*, WC Dkt. No. 09-197, Order, 26 FCC Rcd 13723, 13730, para. 15 (2011) (*Cricket / NTCH Forbearance Order*); *Telecommunications Carriers Eligible for Universal Service Support; PlatinumTel, LLC Petition for Forbearance; CAL Communications, Inc. Petition for Forbearance; ReCellular, Inc. (MSA Wireless) Petition for Forbearance*, WC Dkt. No. 09-197, Order, 26 FCC Rcd 13788, 13795, para. 17 (2011) (*PlatinumTel Forbearance Order*). See also 47 C.F.R. §§ 54.409(c)-(d); 54.410(b)(2).

³¹² See *infra* V.I.E (Electronic Signature).

³¹³ For commenters supporting this rule, see DC PSC Comments at 8; OH PUC Comments at 19-20; MO PSC Comments at 15.

³¹⁴ Some commenters express concern about the Commission's ability to enforce such a rule. See DC PSC Comments at 8; OH PUC Comments at 19-20; CenturyLink Comments at 18. We emphasize that the Commission does not seek to penalize consumers who inadvertently sign up for Lifeline due to misunderstandings about their eligibility under program rules. However, to the extent that persons intentionally defraud the Lifeline program by knowingly participating in the program despite their ineligibility, such behavior will not be tolerated. We note that, (continued....)

notify their telephone service provider of their changed eligibility status, or they may not recognize the importance of doing so. The rule we adopt here will make clear that subscribers must contact their telephone service provider once they are no longer eligible for Lifeline support.

115. Third, we amend section 54.410 of our rules to require all ETCs (or states, where applicable) to obtain each consumer's initials or signature on a document, under penalty of perjury, when the consumer enrolls in Lifeline and annually thereafter, attesting that the information contained in the consumer's application remains true and correct to the best of his or her knowledge and acknowledging that providing false or fraudulent information to receive Lifeline benefits is punishable by law.³¹⁵ We also require ETCs to explain that Lifeline is a government benefit program and consumers who willfully make false statements in order to obtain the benefit can be punished by fine or imprisonment or can be barred from the program.³¹⁶ We expect that by requiring ETCs and/or states to inform consumers that Lifeline is a government benefit and about the penalties for noncompliance with program requirements, we will more effectively reduce both inadvertent and purposeful instances of waste, fraud, and abuse.

116. Fourth, we amend section 54.410 of the Commission's rules to require that ETCs (or states, where applicable) inform consumers about the annual re-certification requirement, described in more detail below, on the certification form that is completed upon program enrollment and annually thereafter. Specifically, ETCs or states should obtain the consumer's initials or signature acknowledging that the consumer may be required to re-certify his or her continued eligibility for Lifeline at any time, and that failure to do so will result in the termination of the consumer's Lifeline benefits.³¹⁷ We expect that such a reminder would lessen non-response rates for ETCs' annual re-certification surveys by increasing consumer awareness of the annual re-certification requirement and of consumers' obligation to respond to ETCs' and/or states' re-certification efforts.

117. Fifth, as noted in the one-per-household section, above, we adopt a requirement that Lifeline participants provide their new address to their ETC within 30 days of moving.³¹⁸ As described in the Database section below, ETCs will be required to enter this address in the duplicates database within 10 business days of receipt to determine if a subscriber is receiving Lifeline support from another ETC.³¹⁹ ETCs (or states, where applicable) should notify their Lifeline subscribers of this requirement on their initial and annual certification forms using clear, easily understandable language.

118. Sixth, as explained below, to eliminate incidences of duplicative support, we require ETCs to collect subscribers' date of birth and last four digits of the Social Security number (or an official Tribal government identification card number (for eligible consumers living on Tribal lands who lack a

(Continued from previous page)

pursuant to section 503 of the Act, any person who "willfully or repeatedly" and knowingly violates "any rule, or regulation, or order issued by of the Commission" may be subject to penalties. 47 U.S.C. § 503(b)(1)(B).

³¹⁵ See *Federal-State Joint Board on Universal Service et al.*, CC Dkt. No. 96-45 *et al.*, i-Wireless, LLC's Revised Compliance Plan, at 8 (filed Sept. 9, 2011); TracFone Safelink Application Forms, available at <https://www.safelinkwireless.com/Safelink/blank-application/>.

³¹⁶ See 47 C.F.R. § 54.8 (permitting the Commission to suspend and debar individuals from activities associated with or related to the low-income program).

³¹⁷ See, e.g., *Telecommunications Carriers Eligible for Universal Service Support*; *Cricket Communications, Inc. Petition for Forbearance*; Cricket Communications, Inc. Compliance Plan, WC Dkt. No. 09-197, at 5 (filed Sept. 23, 2011).

³¹⁸ See *infra* para. 85.

³¹⁹ See *infra* para. 197

social security number) to verify the subscriber's ID through the National Accountability Database.³²⁰ ETCs must collect this information on their initial and annual certification forms and the Lifeline subscriber must attest that the information is correct.

119. Seventh, as discussed below, we amend our rules to clarify that Lifeline service is a non-transferable benefit.³²¹ Prepaid ETCs (*i.e.*, ETCs that do not assess or collect a monthly fee from their Lifeline subscribers) or the state Lifeline program administrator, where applicable, must inform consumers about this rule in clear, easily understandable language on their initial and annual certification form. The certification form should inform consumers that a Lifeline subscriber may not transfer his or her service to any other individual, including another eligible low-income consumer.

120. *Initial and Annual One-per-Household Certification.* As discussed in more detail above, we adopt a "one-per-household" rule for Lifeline.³²² We therefore adopt initial and annual certification rules tied to that requirement. Specifically, we amend section 54.410 of the Commission's rules to require that all ETCs (or state Lifeline program administrators, where applicable) obtain a certification from each subscriber, under penalty of perjury, that the subscriber's household is receiving no more than one Lifeline-supported service. Each eligible Lifeline consumer served by an ETC must attest at the time of enrollment and annually thereafter that he or she receives Lifeline-supported service only from that ETC and, to the best of his or her knowledge, no one in the subscriber's household is receiving a Lifeline-supported service. By June 1, 2012, ETCs in all states (or the state program administrator, where applicable) must update their Lifeline certification form to enable consumers to comply with the one-per-household certification requirement.

121. As the Commission noted in the *Lifeline and Link Up NPRM*, requiring such certifications at sign-up and on an ongoing basis thereafter will inform the consumer of program requirements and periodically remind him or her that support is available for only one Lifeline-supported service per household.³²³ Each ETC's or state's certification form must also explain in plain, easily comprehensible language that: (1) Lifeline is a federal benefit; (2) Lifeline service is available for only one line per household; (3) a household is defined, for purposes of the Lifeline program, as any individual or group of individuals who live together at the same address and share income and expenses; and (4) a household is not permitted to receive Lifeline benefits from multiple providers.³²⁴ The certification form must also contain language stating that violation of the one-per-household requirement constitutes a violation of the Commission's rules and will result in the consumer's de-enrollment from the program, and could result in criminal prosecution by the United States government.³²⁵

³²⁰ See *infra* para. 184.

³²¹ See *infra* para. 257.

³²² See *supra* section VI.B (One-Per-Household).

³²³ *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2824, para. 167. We proposed in the NPRM to adopt a rule requiring ETCs to obtain an initial certification and annual re-certifications documenting their subscribers' compliance with the proposed one-per-residential-address rule. *Id.* at paras. 167-69. However, because we choose to adopt a one-per-household rule today in lieu of the NPRM's one-per-address-proposal, it is appropriate to modify the certification required by Lifeline subscribers to ensure compliance with the one-per-household rule.

³²⁴ Enrolling a consumer in Lifeline without first explaining the one-per-household rule and asking the consumer whether another member of his or her household is already receiving Lifeline-supported service is a violation of our rules.

³²⁵ See also OH PUC Comments at 17 (noting that ETCs should include on their certification forms a warning that a violation of the one per household requirement may result in immediate removal from the program). In its comments, NASUCA states that "a form signed by a customer might eliminate some duplicative support but it will not eliminate outright fraud." NASUCA Comments at 23. We acknowledge that there may be situations where (continued....)

122. Additionally, ETCs (or states, where applicable) will be required to verify each subscriber's compliance with the one-per-household rule annually by requiring each subscriber to submit an annual re-certification complying with the requirements described above.³²⁶ Any subscriber who indicates that he or she is receiving more than one Lifeline-supported service per household, or neglects to make the required one-per-household certification on his or her certification form, must be de-enrolled from Lifeline pursuant to the process for resolving duplicative Lifeline subscriptions described in section 54.405(e)(2) of our rules.³²⁷ Any non-responders will be de-enrolled, after notification and an appropriate waiting period, pursuant to the process set forth in section 54.405(e)(4) of our rules.

123. We do not expect that these certification requirements will impose unreasonable burdens on low-income consumers. As described above, the initial and annual certification form must explain the one-per-household requirement to the consumer in plain and simple language, so the consumer understands what he or she is signing and what the consumer must do to comply with the one-per-household requirement. In addition, to help consumers understand the certifications and program rules, we expect ETCs to verbally explain the certifications to consumers when they are enrolling in person or over the phone. With respect to those enrolling via the Internet, we expect ETCs to highlight the certifications that are required. They may do so, for example, by requiring consumers to acknowledge each certification before moving on to the next field. ETCs should not bury these certifications in their contracts. If included in a contract, these certifications should be at the beginning of the contract and stand out to the consumer. At this time, we do not require consumers to provide documentation (e.g., tax forms) to ETCs in order to establish their compliance with the one-per-household rule.³²⁸ Rather, we will permit consumers to self-certify that they comply with this requirement upon enrollment and annually thereafter, which will simplify the certification process for low-income consumers and provide a minimally invasive means for the Commission to enforce low-income consumers' compliance with the one-per-household rule.

124. This requirement also will not impose unreasonable burdens on ETCs, including ETCs considered to be small businesses. We note that some ETCs already request similar certifications from their subscribers, and we see no reason why requiring all ETCs to do so in the future would be

(Continued from previous page)

consumers provide false certifications of their eligibility for Lifeline, despite the provided warnings. We expect that such consumers will be discovered through the process set forth above for detecting duplicative Lifeline subscriptions and will be de-enrolled pursuant to our rules. Additionally, such consumers, if discovered to have provided a false certification, may be subject to harsher penalties, including possible prosecution.

³²⁶ See *infra* section VI.B (One-per-Household).

³²⁷ As above, this requirement will not impose unreasonable burdens on ETCs, including small ETCs. ETCs may obtain the one-per-household certification as part of their existing verification processes, and the costs of doing so should be minimal. Similarly, ETCs already have de-enrollment processes in place to de-enroll those consumers who are found to be ineligible for Lifeline. See 47 C.F.R. § 54.405(c)-(d). It will not impose unreasonable costs or administrative burdens to require ETCs to extend those processes to include any subscribers who fail to comply with the one-per-household certification requirement we adopt today.

³²⁸ See *supra* paras. 77-79. Unlike the process of establishing program-based eligibility for Lifeline, it is not clear what, if any, documentation a consumer could submit to an ETC to make such a showing. See, e.g., AT&T PN Comments at 4-6; GCI PN Comments at 20-21. It is appropriate to require consumers to present some evidence of their eligibility for government benefits (i.e., documentation of participation in a qualifying state or federal program); however, we recognize the need to balance the potential burdens to consumers with the adoption of rules to guard against waste, fraud, and abuse. As such, we conclude that the self-certification requirement listed above will be the least burdensome alternative to accomplish our goal of ensuring consumers' compliance with the one-per-household rule and thereby preventing waste, fraud, and abuse in the Lifeline program.

unreasonably burdensome.³²⁹ Moreover, we anticipate that any burden to ETCs or consumers would be outweighed by the potential cost savings associated with the prevention of waste, fraud, and abuse in the program. By taking steps to eliminate support for ineligible consumers and prevent duplicative Lifeline claims, the one-per-household certification requirement we adopt today is consistent with our program goal of ensuring that support for low-income voice and broadband service minimizes the contribution burden on consumers and businesses.³³⁰

125. *Eligible Telecommunications Carrier Certifications.* We also amend section 54.410 of the Commission's rules to require ETCs to make certain certifications when the ETC conducts its annual re-certification of its consumers' ongoing eligibility for Lifeline, as described below. We also amend section 54.407 of the Commission's rules to require ETCs to make certain certifications when submitting an FCC Form 497 to USAC for reimbursement. As with respect to the consumer certifications set forth above, we expect the administrative burdens for ETCs to comply with these rules to be minimal.³³¹

126. First, we amend section 54.416 of the Commission's rules to require that an officer of the eligible telecommunications carrier certify that the carrier has procedures in place to review consumers' documentation of income- and program-based eligibility. Eligible telecommunications carriers must make this certification annually to the Administrator as part of the carrier's submission of re-certification data pursuant to section 54.416. In instances where an eligible telecommunications carrier confirms consumer eligibility by relying on official program eligibility data, such as a state or federal database, an officer of the carrier must attest to what data the ETC uses to confirm consumer eligibility in each state.³³² By requiring ETCs to provide these certifications annually, we will help ensure ETCs' compliance with the rules we adopt above relating to the documentation of program-based eligibility for Lifeline.³³³

127. Second, we adopt a rule requiring that an officer of each ETC must attest that the carrier is in compliance with all federal Lifeline certification procedures. This rule will help to protect the Fund from waste, fraud, and abuse by ensuring that ETCs are accountable for their compliance with program rules. Eligible telecommunications carriers must make this certification annually to the Administrator as part of the carrier's submission of re-certification data pursuant to section 54.416.³³⁴

128. Third, we adopt a rule in section 54.407 requiring that each ETC certify when it seeks reimbursement that the carrier has obtained a valid certification form for each consumer for whom the

³²⁹ See *Cricket / NTCH Forbearance Order*, 26 FCC Rcd at 13730, para. 15; *PlatinumTel Forbearance Order*, 26 FCC Rcd at 13795, para. 17; *i-Wireless Forbearance Order*, 25 FCC Rcd at 8790, para. 16; *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3387, para. 12; *TracFone Forbearance Order*, 20 FCC Rcd at 15103, para. 18. See also Letter from John J. Heitmann & Josh Guyan, Counsel for Link Up for America Coalition, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 6 (filed Oct. 3, 2011) (stating that their members have agreed to 1) explain in clear and plain language to new customers that they may not receive more than one Lifeline supported service; 2) require all Lifeline applicants to confirm on the application form that he or she is not receiving Lifeline supported service from any other Lifeline provider; and 3) require all Lifeline applicants to self-certify that they receive Lifeline services only from the ETC) (Link Up for America Coalition Oct. 3 *ex parte* Letter).

³³⁰ See *supra* section III.C (Performance Goals & Measures).

³³¹ The Commission currently directs ETCs to make certain certifications relating to the Lifeline program. See 47 C.F.R. § 54.410(b). In this section, we do not substantially change those requirements; rather, we simply add additional certifications that the ETC must make annually and when seeking reimbursement from the Fund.

³³² See discussion *supra* section VI.C. (Certification of Consumer Eligibility for Lifeline).

³³³ See *id.*

³³⁴ See *infra* section VI.C.2.b (Annual Re-Certification of Consumer Eligibility for Lifeline).

ETC seeks Lifeline reimbursement. This rule will protect low-income consumers by preventing an ETC from enrolling a consumer in their Lifeline program without his or her consent and seeking reimbursement for that consumer.³³⁵ This rule will also protect against waste, fraud, and abuse by ensuring that ETCs claim support for only those subscribers that are eligible for the program and who have agreed to comply with the Lifeline program requirements.

b. Annual Re-Certification of Consumer Eligibility

129. Consistent with the recommendations of the Joint Board, we amend section 54.410 of the Commission's rules to adopt a set of uniform re-certification procedures that all ETCs should perform annually to verify the ongoing eligibility of their Lifeline subscriber base. These standards will serve as a minimum threshold for re-certification procedures to be performed by all ETCs, but will allow ETCs in specific circumstances to leverage existing state verification processes to more easily verify the ongoing eligibility of their subscriber base each year.³³⁶

130. Pursuant to the new rule we adopt today, all ETCs must re-certify the eligibility of their Lifeline subscriber base as of June 1, 2012 by the end of 2012 and report the results to USAC by January 31, 2013.³³⁷ This re-certification may be done on a rolling basis throughout the year, at the ETC's election.³³⁸ Where ongoing eligibility cannot be determined through access to a qualifying database either by the ETC or the state, and there is no state administrator verifying the continued eligibility of Lifeline subscribers, by the end of 2012, an ETC must re-certify the continued eligibility of all of its subscribers by contacting them—which can be done in any of a number of ways, including in person, in writing, by phone, by text message, by email, or otherwise through the Internet—to confirm their continued eligibility pursuant to the rules established in this Order.³³⁹ Specifically, all such ETCs must obtain from each Lifeline subscriber by the end of 2012 a re-certification form that contains each of the required certifications described above.³⁴⁰

131. In states where a state agency or a third party has implemented a database that carriers may query to re-certify the consumer's continued eligibility, the carrier (or state agency or third-party, where applicable) must instead query the database by the end of 2012 and maintain a record of what

³³⁵ See *infra* section VI.F (Automatic and Coordinated Enrollment).

³³⁶ Adoption of a set of uniform, minimum verification procedures is supported by CenturyLink, Cincinnati Bell, Consumer Groups, Cricket, TracFone, US Telecom, YourTel, and the NY PSC. CenturyLink Comments at 18-19; Cincinnati Bell Comments at 9; Consumer Groups PN Comments at 14; Cricket Reply Comments at 12-13; TracFone Reply Comments at 4-6; US Telecom Comments at 5; YourTel Comments at 12; NY PSC Comments at 9-10.

³³⁷ Consistent with the Wireline Competition Bureau's practice with respect to the issuing reminders via Public Notice to the federal default states, the Bureau will publish a Public Notice after June 1, 2012 to remind ETCs that they must re-certify all of their subscribers of record as of June 1, 2012 by December 31, 2012 and to report their results to USAC by January 31, 2013.

³³⁸ We delegate to the Wireline Competition Bureau the authority to establish, in coordination with USAC, a process for facilitating the collection of consumer re-certifications on a rolling basis. See, e.g., Letter from Matthew A. Brill, Counsel, Cricket Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 2 (filed Jan. 24, 2012) (Cricket Jan. 24 *ex parte* Letter) (recommending that annual re-certifications be permitted on a rolling basis).

³³⁹ See *infra* para. 132.

³⁴⁰ See *supra* paras. 111-24; see also, e.g., TracFone Reply Comments at 5-6; Letter from Norina Moy, Director, Government Affairs, Sprint Nextel, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 1 (filed Nov. 14, 2011) (Sprint Nov. 14 *ex parte* Letter).

specific data was used to re-certify eligibility and the date of re-certification.³⁴¹ If a subscriber's address cannot be verified through the state data, ETCs who do not bill their subscribers must contact the subscriber every year to obtain a valid address which may be accomplished during the annual certification process.

132. In contrast to the current verification rules, which require all sampled subscribers (but no other subscribers) to provide documentation of their continued eligibility for Lifeline, the rule we adopt today will apply to all Lifeline subscribers enrolled in the program as of June 1, 2012, while allowing those consumers to provide self-certifications without associated documentation. Such certifications may be obtained through a written format, an Interactive Voice Response system, or a text message.³⁴² Regardless of the format used to re-certify the subscriber's continued eligibility for Lifeline, ETCs (or the state Lifeline administrator or other state agency, where applicable) must convey all of the required information set forth in the amended section 54.410 and obtain from the subscriber an individual certification for each requirement set forth in the rule.³⁴³ Any text messages must be sent to the phone number associated with the supported service, and text responses must be sent from that phone number. Carriers (or the state Lifeline program administrator, where applicable) must report the results of this annual re-certification process, as described below, to USAC by January 31, 2013.³⁴⁴ Carriers must also file an annual Lifeline eligible telecommunications carrier certification form with USAC, beginning on January 31, 2013, that complies with the certification requirements discussed above.³⁴⁵

133. Ongoing eligibility of Lifeline subscribers must continue to be verified annually after 2012; however, we expect that ETCs will increasingly gain access to automated means of verifying subscriber eligibility. In those instances where ongoing eligibility cannot be determined through access to a qualifying database either by the ETC or the state, and there is no state administrator verifying continued eligibility, ETCs retain the responsibility for annual subscriber re-certification. However, after 2012, ETCs may elect to have USAC administer the self-certification process on their behalf. We direct USAC to work with the ETCs and the Bureau to develop a plan for USAC to conduct annual re-certifications in lieu of ETCs, with such annual certifications starting in 2013. If an ETC chooses to perform the annual self-certifications itself, it must re-certify the continued eligibility of all of its subscribers by contacting them—which can be done in any of a number of ways, including in person, in writing, by phone, by text message, by email, or otherwise through the Internet—to confirm their

³⁴¹ In states where a state agency or third-party is responsible for performing annual recertification functions, the state or its agent should provide the ETC with a copy of each Lifeline subscriber's re-certification form.

³⁴² See *infra* section VI.E (Electronic Signature).

³⁴³ Section 54.410 requires that the subscriber be provided with program information, including that Lifeline is a federal benefit available to only one line per household. In addition, the subscriber must certify that he or she continues to be eligible for the program and will notify the carrier within 30 days if he or she no longer satisfies the criteria for receiving Lifeline support. A message that merely asks "Are you still eligible for Lifeline?" would not convey the necessary information that must be provided to the subscriber, nor would a message that directs the consumer to a url where the full certification information is listed. In order to convey to and obtain all of the required information from the subscriber via text messages, we expect that the ETC (or state administrator or agency) will need to send and receive multiple messages to the subscriber. Similarly, when re-certifying the subscriber by phone or IVR, the subscriber must be prompted to certify the individual requirements set forth in section 54.410.

³⁴⁴ See *infra* paras. 147-48 (collection and submission of re-certification data). But see Cricket Jan. 24 *ex parte* Letter at 2 (recommending that the Commission retain the existing August 31 filing deadline for re-certifications or a similar mid-year deadline and require re-certification to be performed on a rolling basis).

³⁴⁵ See *supra* paras. 125-28 (ETC certifications).

continued eligibility pursuant to the rules established in this Order.³⁴⁶ Additionally, all carriers must continue to file an annual Lifeline ETC certification form with USAC that complies with the certification requirements discussed above.³⁴⁷

134. This amendment to our rules will work in lock step with other measures we implement today. Because consumers in states without eligibility databases will be required to provide documentation at enrollment to establish program eligibility, we find a requirement that ETCs or program administrators, where applicable, verify all Lifeline subscribers' documentation on an annual basis to be unnecessary.³⁴⁸ The upfront documentation requirement will serve as a sufficient initial check of consumer eligibility and alleviate the need for ETCs or third-party administrators to obtain documentation from subscribers on a recurring basis as part of the back-end re-certification process. Additionally, some commenters note that by eliminating the requirement that consumers provide annual documentation of continued eligibility to their ETC, we could reduce the burden of annual verifications on both consumers and ETCs.³⁴⁹ The collection of annual self-certifications from all consumers as part of the re-certification process will also assist in obtaining updated address information from their subscribers, which can ultimately be used to populate the duplicates database that we adopt today.³⁵⁰

135. Further, by requiring ETCs, or program administrators, where applicable, to annually re-certify the eligibility of their entire subscriber base, we will remedy the problems associated with sampling noted by the Commission in the NPRM. In contrast to the current sampling methodology, all of an ETC's Lifeline subscribers will be subject to annual re-certification requirements. The current sampling methodology, while statistically significant and sufficient for some data analysis purposes, fails to assess the actual eligibility of a large number of subscribers nationwide and, more importantly, leaves enrolled in the program subscribers that are not eligible. In contrast, the approach we adopt today will assess the eligibility of all current subscribers to the program. Moreover, any subscribers that fail to respond to the ETC's or administrator's re-certification attempts must be de-enrolled from Lifeline pursuant to the de-enrollment procedures set out in our rules, as described in more detail below.³⁵¹ These protections will assist the Commission to more effectively protect the Fund from waste, fraud, and abuse.³⁵²

136. After consideration of the record, we decline to adopt the verification methodologies proposed in the NPRM for several reasons. We decline to rely solely on statistical sampling because we

³⁴⁶ See *supra* paras. 111-24 (Consumer certifications). This re-certification may be done on a rolling basis throughout the year. We delegate to the Wireline Competition Bureau the authority to establish, in coordination with USAC, a process for facilitating the collection of consumer re-certifications on a rolling basis.

³⁴⁷ See *supra* paras. 125-28 (ETC certifications).

³⁴⁸ See *supra* paras. 98-110 (Determination of Initial Program Eligibility).

³⁴⁹ See, e.g., Letter from Mitchell F. Brecher, Counsel, TracFone Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 3, 10 (filed Oct. 17, 2011) (estimating that by requiring all ETCs to obtain a signed certification from each consumer that the consumer is eligible to receive Lifeline and does not receive Lifeline service from any other carrier could save the fund approximately \$270 million per year) (TracFone Oct. 17 Ex Parte Presentation); Sprint Nov. 14 *ex parte* Letter at 1-2 (estimating that if all Lifeline subscribers are required to annually re-certify their continued Lifeline eligibility, the fund could save approximately \$150 million per year).

³⁵⁰ See *infra* section VII.A (National Lifeline Accountability Database).

³⁵¹ See *infra* paras. 141-46.

³⁵² See, e.g., GRTI Comments at 16-17; MO PSC Comments at 16; Alaska Commission Reply Comments at 9-10.

remain concerned that it will not be sufficient to detect and remedy instances of subscriber ineligibility.³⁵³ As the Commission noted in the NPRM, the current methodology fails to identify the ineligible subscribers that are not part of the sample.³⁵⁴ The rule we adopt today remedies that problem by ensuring that the eligibility of all Lifeline subscribers will be re-certified on an annual basis and is consistent with our obligation to protect the Fund from waste, fraud, and abuse.³⁵⁵

137. With respect to sample-and-census, the Commission received feedback from commenters – ETCs in particular – expressing concern that the census component would be overly burdensome.³⁵⁶ These commenters state that if a full census were triggered it would be excessively costly and burdensome for ETCs, particularly ETCs with a small number of Lifeline subscribers, to collect and verify the eligibility documentation of their entire subscriber base.³⁵⁷ We adopt what is expected to be a less burdensome method of checking the eligibility of an entire subscriber's base as it does not require the consumer to produce documentation of continued eligibility.

138. We also considered alternatives that would require ETCs to verify only a portion of their Lifeline subscriber base, including allowing small ETCs within a state to perform sampling in the aggregate rather than on an individual basis, requiring ETCs with a minimal number of Lifeline subscribers to sample fewer subscribers than larger ETCs, and allowing all ETCs to sample a lesser percentage of their Lifeline subscriber base. The approach we adopt today strikes an appropriate balance between these interests by helping to identify and de-enroll ineligible subscribers, while imposing fewer burdens on consumers and ETCs than a full census survey (*i.e.*, requiring consumers to annually produce documentation to verify continued eligibility).³⁵⁸ Some commenters note that the costs for an ETC to seek out and obtain annual self-certifications from subscribers could be significantly lower than the costs of performing a full verification with examination of the underlying documentation.³⁵⁹

³⁵³ See, e.g., DC PSC Comments at 5-6; TracFone Reply Comments at 5.

³⁵⁴ *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2826-27, para. 181.

³⁵⁵ In the NPRM, the Commission noted that it has the means to identify ineligible subscribers that are not part of an ETC's statistical survey, including but not limited to the use of audits. *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2821, para. 181 n.316.

³⁵⁶ See, e.g., MITS Reply Comments at 5; GCI Comments at 4; CTIA Comments at 20.

³⁵⁷ See, e.g., NTCA Comments at 5-7; MITS Reply Comments at 5; TCA Comments at 3-4; TSTCI Reply Comments at 1-2.

³⁵⁸ But see GCI Nov. 23 *ex parte* Letter at 3-4 (stating that an annual recertification requirement would be burdensome and would be disruptive to consumers, who may lose service if they do not respond to the ETC's recertification requests); see also Letter from Alan Buzacott, Executive Director, Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 2 (filed Jan. 17, 2012) (Verizon Jan. 17 *ex parte* Letter).

³⁵⁹ See, e.g., Letter from Mitchell F. Brecher, Counsel, TracFone Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.* (filed Aug. 24, 2011) (stating that in 2010, TracFone spent \$4.75 per verified subscriber to ascertain that each subscriber remained head of household and received Lifeline service only from TracFone; however, to verify the continued eligibility of their Lifeline subscribers by contacting a statistically valid sample of its subscriber base, TracFone's cost per verified subscriber was \$66.69) (TracFone Aug. 24 *ex parte* Letter); Letter from Norina Moy, Director, Government Affairs, Sprint Nextel, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 1 (Sprint Aug. 12 *ex parte* Letter). But see Letter from Mary L. Henze, Assistant Vice President, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, Attach. At 3 (AT&T Jan. 24 *ex parte* Letter).

139. We also do not believe that the re-certification process we adopt today will be overly burdensome to consumers.³⁶⁰ As noted above, the amendments to section 54.410 will permit consumers to annually re-certify to their continued eligibility for Lifeline without requiring associated documentation as is currently mandated by our program rules for consumers in federal default states.³⁶¹ While all consumers will be required to provide an annual self-certification of continued eligibility, we expect that elimination of the requirement that consumers annually provide supporting eligibility documentation will enable consumers to more easily respond to verification surveys, thereby reducing the number of Lifeline subscribers de-enrolled for failure to respond to carrier verification efforts. Additionally, as discussed below, we direct the Wireline Competition Bureau and the Consumer and Governmental Affairs Bureau to coordinate with USAC, states, consumer groups, and ETCs to facilitate a consumer outreach campaign to educate consumers about the Lifeline program rules.³⁶² By educating consumers about the annual self-certification requirement adopted in the Order, we expect that we will reduce the number of subscribers that fail to respond to an ETC's or administrator's re-certification attempts. Further, by ensuring that all Lifeline subscribers annually verify their continued eligibility for the program, we expect to regain cost savings that will benefit those consumers and companies who contribute to the Universal Service Fund.³⁶³

140. In the NPRM, the Commission sought comment on the Joint Board's recommendation that "states be allowed to utilize different and/or additional verification procedures so long as those procedures are at least as effective in detecting waste, fraud, and abuse as the uniform minimum required procedures."³⁶⁴ Pursuant to the rule we adopt today, as a condition of receiving federal Lifeline support, ETCs in all states, or the state Lifeline program administrator, where applicable, must perform the re-certification processes adopted in this Order.³⁶⁵ We recognize that states may wish to impose additional requirements where they have their own Lifeline programs and specific concerns that may not be applicable to ETCs in all states.³⁶⁶ States may supplement the federal re-certification methodology with their own procedures specifically tailored to state-specific program requirements.³⁶⁷ Those supplemental procedures, however, must be performed in addition to, and but not in lieu of, the uniform, minimum

³⁶⁰ See, e.g., GCI Nov. 23 *ex parte* Letter at 3-4; Verizon Jan. 17 *ex parte* Letter at 2.

³⁶¹ See 47 C.F.R. § 54.410(c)(2).

³⁶² See *infra* paras. 281-82.

³⁶³ See *supra* section III.C (Performance Goals and Measures).

³⁶⁴ *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2825, para. 176 (citing 2010 Joint Board Recommended Decision, 25 FCC Rcd at 15608, para. 28).

³⁶⁵ Some states, such as Arkansas, North Carolina, and New York, have adopted verification methodologies akin to the Commission's current sampling formula. As discussed above, the Commission's current sampling methodology is flawed due to its inability to detect potentially large numbers of ineligible Lifeline subscribers and we replace it today with a uniform re-certification requirement. See *supra* para. 136. To ensure the benefits of this rule change accrue nationwide, it is necessary to mandate that ETCs in all states, at minimum, annually re-certify the continued eligibility of their Lifeline subscriber base. In those states where verification functions are performed by the state and not ETCs, all states are expected to implement procedures to comply with the verification processes adopted here.

³⁶⁶ See OR PUC Comments at 3, Alaska Commission Reply Comments 2 at 14-15, CenturyLink Comments at 19, MA DTC Comments at 9, DC PSC Comments at 5-6.

³⁶⁷ For example, some states have verification procedures in place where the subscriber must provide proof of continued eligibility. See, e.g., CA PUC PN Comments at 9-10.

standards we adopt today for those ETCs who receive support from the federal Universal Service Fund.³⁶⁸

141. *Procedures to be followed after annual re-certification.* In the *Lifeline and Link Up NPRM*, the Commission proposed to amend section 54.405 of the Commission's rules to adopt a procedure for de-enrolling those subscribers who do not respond to an ETC's verification surveys.³⁶⁹ Specifically, the Commission proposed a rule requiring ETCs to provide a written notice of impending service termination to the subscriber, separate from the subscriber's bill, and then give the subscriber 30 days after the date of the letter to demonstrate that his or her Lifeline service should not be terminated.³⁷⁰ In order to protect the program against waste, fraud, and abuse, we amend our rules to codify the proposed de-enrollment procedure.³⁷¹

142. We amend section 54.405 of the Commission's rules to require ETCs to de-enroll within 30 days Lifeline subscribers who do not respond to the carrier's or state's attempts to re-certify the subscriber within a 30-day period. When contacting their Lifeline subscribers to perform the annual re-certification process, ETCs (or the state Lifeline program administrator, where applicable) must notify their subscribers in writing that failure to respond to the re-certification request could result in de-enrollment from that carrier's Lifeline program. By codifying a specific requirement that all ETCs de-enroll subscribers for non-responsiveness, we will ensure that support is not distributed where subscribers fail to evidence their ongoing eligibility for Lifeline.

143. We similarly amend section 54.405 of our rules to provide that, where the carrier has a reasonable basis to believe that the subscriber no longer meets the Lifeline-qualifying criteria (including instances where a subscriber informs the ETC or the state that he or she is ineligible for Lifeline), the ETC must send notification of impending termination in writing separate from the subscriber's monthly bill. Carriers must allow subscribers 30 days following the date of the impending termination letter in which to demonstrate continued eligibility.³⁷²

144. We do not anticipate that the de-enrollment processes we adopt today will unreasonably burden low-income consumers. As stated above, ETCs in federal default states currently de-enroll Lifeline subscribers for failure to respond to an ETC's verification survey. However, no standardized de-enrollment process is presently in place to provide subscribers with notice of impending de-enrollment and an opportunity to demonstrate their continued eligibility for Lifeline. The processes we adopt here will ensure that Lifeline subscribers are notified of their impending de-enrollment and are given an additional period of time during which they may re-certify to their continued eligibility.

³⁶⁸ The state of California, for example, requires all Lifeline subscribers to annually provide a re-certification (verification) form to Solix, the third-party administrator of California's Lifeline program. CA PUC PN Comments at 9; Solix Comments at 6. Solix also verifies the eligibility of 3 percent of the existing Lifeline subscribers in California by requesting documentation to confirm the subscribers' ongoing eligibility. CA PUC PN Comments at 9-10; Solix Comments at 6. The re-certification procedure we adopt today would not preclude California from implementing procedures to examine the eligibility documentation of a random sample of Lifeline subscribers.

³⁶⁹ *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2829-30, para. 192.

³⁷⁰ *Id.* at 2872, Appendix A, 47 C.F.R. § 54.405(e) (proposed rule).

³⁷¹ For commenters supporting adoption of a de-enrollment requirement for non-responders, see DC PSC Comments at 6; TracFone Comments at 32; MI PSC Comments at 8.

³⁷² *See id.* In such cases, section 54.405(d) of the Commission's rules currently requires ETCs to allow subscribers 60 days following the date of impending termination to demonstrate continued program eligibility. *See* 47 C.F.R. § 54.405(d). We amend section 54.405 of the Commission's rules to reduce that period of time to 30 days, in order to more effectively reduce instances of waste, fraud, and abuse in the program.

145. Moreover, we adopt a requirement above that ETCs must inform consumers about the annual re-certification requirement on the certification form that is completed upon initial program enrollment and annually thereafter.³⁷³ On their annual re-certification materials, ETCs or the program administrator, as applicable, must clearly and succinctly inform subscribers that they are being contacted to re-certify their continuing eligibility for Lifeline. The subscribers must be informed that if they fail to respond, they will be considered ineligible for Lifeline and de-enrolled from the program.³⁷⁴ ETCs and states may also choose to notify subscribers about the re-certification requirements in their Lifeline outreach materials.³⁷⁵ By taking these actions, ETCs and states will ensure that consumers are aware of the importance of responding to re-certification efforts, and that they are not inadvertently disconnected due to a lack of understanding of program rules.³⁷⁶

146. We also do not expect that these rules will impose significant burdens on ETCs (including small ETCs), many of whom already have similar de-enrollment processes in place.³⁷⁷ These processes are also consistent with our current rules, which already require ETCs in all states and territories to terminate Lifeline service if the carrier has a reasonable basis to believe that a subscriber no longer satisfies the qualifying criteria.³⁷⁸

147. *Collection and submission of re-certification data.* Currently, the Commission has access to verification results only from ETCs in federal default states and in a handful of non-federal-default states that require ETCs to submit verification results annually to USAC.³⁷⁹ As the Commission noted in the NPRM, USAC presently receives verification results for a total of 17 states and territories.³⁸⁰ In the *2010 Recommended Decision*, the Joint Board recommended that all ETCs in all states should be required to submit the data results of their verification sampling to USAC, the Commission, and their respective states, in order to obtain a more complete set of verification data.³⁸¹ The Joint Board also recommended that ETCs' verification results be made publicly available.³⁸² The Commission sought comment on the

³⁷³ See *supra* para. 116.

³⁷⁴ See also MI PSC Comments at 8.

³⁷⁵ See MI PSC Comments at 8; Consumer Groups Comments at 25-26.

³⁷⁶ See Consumer Groups Comments at 25-26 (stating that the Commission should be cautious in requiring ETC's to de-enroll consumers who decline to respond to ETC's verification attempts and recommends a phase-in of the rule, if adopted, to allow outreach).

³⁷⁷ Between 2008 and 2011, under the Commission's verification methodology for federal default states, no distinction was made between subscribers who are ineligible for Lifeline and those who do not respond to an ETC's verification survey. See *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2879-81, Appendix B; see also *Deadline for Annual Lifeline Verification Surveys and Certifications*, WC Dkt. No. 03-109, Public Notice, 25 FCC Rcd 7272, 7277, para. 8 (Wireline Comp. Bur. 2010) (*Verification Public Notice*). Thus, subscribers are routinely de-enrolled by ETCs in federal default states. Moreover, other ETCs may already de-enroll subscribers who fail to respond to their verification surveys. See, e.g., TracFone Comments at 32.

³⁷⁸ 47 C.F.R. § 54.405(c),(d).

³⁷⁹ *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2830, para. 193.

³⁸⁰ In addition to the federal default states, the following non-federal-default states require ETCs to submit their verification results to USAC: Alabama, Arkansas, Arizona, New York, North Carolina, Pennsylvania, and West Virginia.

³⁸¹ *2010 Joint Board Recommended Decision*, 25 FCC Rcd at 15607-08, paras. 26-27.

³⁸² *Id.*

Joint Board's recommendations in the *Lifeline and Link Up NPRM*.³⁸³

148. We codify a rule requiring all ETCs in all states (or the state administrator, where applicable) to submit their aggregated re-certification data to USAC and the Commission by January 31, 2013.³⁸⁴ We delegate to the Wireline Competition Bureau the authority to coordinate with USAC to determine an appropriate format for the submission of such data.³⁸⁵ All eligible telecommunications carriers must also provide this re-certification data to the relevant state commission, where the carrier is subject to state jurisdiction, and to the relevant Tribal government, for subscribers residing on reservations or Tribal lands. If an ETC opts to continue performing the annual re-certification process after 2012, the ETC must provide the results of its attempts to obtain signed certifications from all consumers attesting to their continued eligibility for Lifeline to USAC, the Commission, and the relevant state commission, where the carrier is subject to state jurisdiction, by January 31 of each year, beginning on January 31, 2014. All ETCs performing annual re-certifications after 2012 must also provide, by January 31 of each year, their annual recertification results for subscribers residing on reservations or Tribal lands to the relevant Tribal government.

D. Tribal Lifeline Eligibility

149. In this Order, we take steps to advance the availability of Lifeline support for low-income consumers living on or near Tribal lands. First, we amend section 54.409 of the Commission's rules to clarify that low-income residents of Tribal lands may be eligible for program support based on either income or participation in certain federal or Tribal assistance programs. Second, we amend section 54.409 of the Commission's rules to expand program-based eligibility to participants in the Food Distribution Program on Indian Reservations (FDPIR), a federal program that provides food to low-income households living on Indian reservations and to Native American families residing in designated areas near reservations and in the State of Oklahoma. Third, we establish a process for Tribal governments to seek designation of off-reservation lands as Tribal lands for the purpose of receiving enhanced Lifeline support and remove the term and definition of "near reservation" from section 54.400(e) of our rules. Fourth, we clarify that, pursuant to section 54.410 of the Commission's rules, low-income residents of Tribal lands may self-certify as to their residency on Tribal lands.

1. Background

150. In its *2000 Tribal Lifeline Order*, the Commission adopted measures to significantly enhance Lifeline and Link Up support for low-income residents living on Tribal lands.³⁸⁶ The

³⁸³ *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2830, paras. 193-94.

³⁸⁴ As stated above, the annual re-certification procedures we adopt today will serve as a uniform, minimum set of processes to be followed by all ETCs in all states. By adopting a uniform set of re-certification standards, we will remedy the problems that result from having a patchwork of procedures that vary on a state-by-state basis. For example, a uniform re-certification methodology will reduce compliance costs and administrative burdens on ETCs. See CTIA Comments at 20; Cincinnati Bell Comments at 9; Cricket Comments at 11-12; TracFone Comments at 31-32; YourTel Comments at 12. Moreover, a uniform rule will ensure that adequate checks for ineligible consumers are being performed by ETCs in all states, thereby reducing potential waste, fraud, and abuse in the program.

³⁸⁵ This format should be such that data can be easily submitted to USAC by ETCs, states, and third-parties, as applicable, and to minimize the administrative burdens for compliance with the rules we adopt today.

³⁸⁶ *2000 Tribal Lifeline Order*, 15 FCC Rcd at 12231-32, paras. 20-85. An eligible resident of Tribal lands is defined as a qualifying low-income consumer living on or near a reservation, with a reservation being defined as "any federally recognized Indian tribe's reservation, pueblo, or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments." 47 C.F.R. § 54.400(e); see also *2000 Tribal Lifeline Order*, 15 FCC Rcd 12217-19, paras. 16-19. See *infra* paras. 156-63 for a discussion of "near reservation" lands.

Commission defined an eligible resident of Tribal lands as a low-income consumer living on a reservation, with a reservation defined as “any federally recognized Indian tribe’s reservation, pueblo, or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments.”³⁸⁷ The changes were a direct response to the disproportionately low subscribership to telecommunications services among Tribal communities at the time. For example, in 2000, only an estimated 47 percent of Tribal households had phone service compared to 94 percent of all American households and 76.7 percent of rural households earning less than \$5,000 per year.³⁸⁸ The rules adopted in 2000 were designed to address this urgent challenge.

151. Relying on both section 254 and the unique trust relationship between the federal government and American Indian Tribes and Alaska Native Villages,³⁸⁹ the Commission created a fourth tier of Lifeline support, providing up to an additional \$25 (for a maximum of \$35) per month in Lifeline support to qualifying low-income consumers living on Tribal lands.³⁹⁰ The Commission also expanded Link Up to allow qualifying residents of Tribal lands to receive up to an additional \$70 (for a maximum of \$100) off of the cost of commencing telephone service.³⁹¹ Moreover, the Commission broadened the program-based eligibility criteria for Lifeline to include the Bureau of Indian Affairs (BIA) general assistance program, Tribally-administered Temporary Assistance for Needy Families, Head Start, and the National School Lunch Program’s free lunch program.³⁹²

152. In the *Lifeline and Link Up NPRM*, the Commission proposed further changes to the rules to expand opportunities for eligible households on Tribal lands to receive Lifeline support and to permit Tribal governments to designate additional areas as Tribal lands eligible for support.³⁹³

2. Discussion

153. *Income-based eligibility.* We first revise sections 54.409(a) and 54.409(c) of our rules to more clearly reflect that residents of Tribal lands are eligible for Lifeline support based on income.³⁹⁴

³⁸⁷ 47 C.F.R. § 54.400(e); see also *2000 Tribal Lifeline Order*, 15 FCC Rcd 12217-12219, paras. 16-19.

³⁸⁸ *2000 Tribal Lifeline Order*, 15 FCC Rcd at 12211, 12212, para. 2.

³⁸⁹ *Id.* at 12221-22, para. 22.

³⁹⁰ *Id.* at 12230-31, para. 42. Such support is commonly referred to as Tier 4, or enhanced, Lifeline support.

³⁹¹ *Id.* at 12238-39, para. 59. Such support is commonly referred to as enhanced Link Up support.

³⁹² *Id.* at 12245, para. 68.

³⁹³ *Id.* at 2810-17, paras. 126-41.

³⁹⁴ In the *Lifeline and Link Up NPRM*, the Commission observed that significant confusion exists among ETCs, USAC and Tribal governments about whether residents of Tribal lands can qualify for enhanced support based on income. *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2811, para. 127. The Commission noted that interpretations of section 54.409 of the Commission’s rules appear to differ despite consistent language in the *2000 Tribal Lifeline Order* and the *2003 Tribal Lifeline Order*. Both of those orders stated that the new rules enhancing support represented an expansion of the low-income program; therefore, income-based eligibility for Tribal Lifeline, which existed prior to the amendments, remained intact. See, e.g., *2000 Tribal Lifeline Order*, 15 FCC Rcd at 12245, para. 68 (“Specifically, we *expand* the federal default qualification criteria for eligibility for Lifeline and Link Up assistance . . .” (emphasis added)); *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Twenty-Fifth Order on Reconsideration, Report and Order, Order, and Further Notice of Proposed Rule Making, CC Dkt. No. 96-45, 18 FCC Rcd 10958, 10970, para. 23 (2003) (*2003 Tribal Lifeline Order*) (“[T]he Commission *broadened* the federal default qualification criteria to enable low-income individuals living on tribal lands to qualify for this enhanced support . . . We make this clarification to ensure that those otherwise eligible to participate in the enhanced programs will have the full opportunity to do so.” (emphasis added)).

Consumers living on Tribal lands may qualify for Tribal lands support if the consumer's household income is at or below 135 percent of the federal poverty guidelines; consumers may also qualify through participation in any Tribal-specific federal income assistance program identified in our rules or participation in any other qualifying income assistance program identified in subsection 54.409(b) of our rules. The record suggests, and we agree, that this revision will eliminate any perceived confusion about the availability of income-based eligibility to residents of Tribal lands³⁹⁵ and reduce the uncertainty that qualifying consumers on Tribal lands have faced in securing Lifeline support.³⁹⁶

154. *Program-based eligibility.* We also amend section 54.409 of our rules to expand the number of assistance programs that will qualify eligible residents of Tribal lands for program support. We add the Food Distribution Program on Indian Reservations, a food assistance program for Tribal communities, to the list of programs through which participating consumers living on Tribal lands may qualify for program support. In the *Lifeline and Link Up NPRM*, the Commission noted that, while residents of Tribal lands may qualify for Lifeline support based on participation in the SNAP, they may not qualify based on participation in FDPIR.³⁹⁷ The Commission observed that because both programs have income-based eligibility criteria, but households may not participate in both programs, some residents of Tribal lands do not qualify for Lifeline support simply because they choose to participate in FDPIR rather than SNAP.³⁹⁸ Indeed, the Commission observed that members of more than 200 Tribes currently receive benefits under FDPIR, and that elderly Tribal residents often opt for FDPIR benefits.³⁹⁹ The Commission proposed amending section 54.409 of our rules to add FDPIR to the list of qualifying programs through which participating consumers living on Tribal lands may qualify for Lifeline support.⁴⁰⁰

155. Permitting SNAP beneficiaries to qualify for low-income support but not FDPIR beneficiaries is inconsistent with our program goals when the SNAP and FDPIR programs utilize such similar eligibility criteria.⁴⁰¹ Moreover, the record reflects that our current approach excludes from the

³⁹⁵ As stated in the *NPRM*, "The Commission's current rules regarding Tribal eligibility for Lifeline support have been subject to differing interpretations. Specifically, ETCs, USAC, and Tribal groups have indicated there has been inconsistency and confusion among federal default and non-default states regarding whether residents of Tribal lands may qualify for participation in the program based on income, even though there is language in Commission orders so indicating." See *Lifeline and Link Up NPRM* 26 FCC Rcd at 2811, para. 127.

³⁹⁶ Commenters who addressed this issue expressed support for amending the rule to make clear that residents of Tribal lands qualify for Lifeline based on income. CenturyLink Comments at ii-iii, 14; GRTI Comments at 11; YourTel Comments at 10. But see Alaska Commission Reply Comments at 4-5 (urging the Commission to proceed with care in implementing changes to the eligibility criteria to ensure that consumers currently eligible for Tier 4 support in Alaska are not inadvertently excluded from the program).

³⁹⁷ *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2812, para. 129.

³⁹⁸ *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2812, para. 130. For a summary of the eligibility criteria for SNAP, see United States Department of Agriculture, Supplemental Nutrition Assistance Program (SNAP), Eligibility Criteria, http://www.fns.usda.gov/snap/applicant_recipients/eligibility.htm (last visited Jan. 30, 2012). For a summary of the eligibility criteria for FDPIR, see United States Department of Agriculture, FD Programs, About FDPIR, http://www.fns.usda.gov/fdd/programs/fdpir/about_fdpir.htm (last visited Jan. 30, 2012); see also Food Distribution Fact Sheet, October 2010, available at <http://www.fns.usda.gov/fdd/programs/fdpir/pfs-fdpir.pdf>.

³⁹⁹ See *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2812, para. 130.

⁴⁰⁰ *Id.* at para. 131; see also *id.* at Appendix A, 47 C.F.R. § 54.409(b) (proposed rule).

⁴⁰¹ See Letter from Duke Storen, Director, Office of Strategic Initiatives, Partnerships, and Outreach, United States Department of Agriculture, Food and Nutrition Service, to Marlene Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 (filed Sept. 2, 2011) (*USDA FDPIR Letter*).

low-income program the very population that the Commission has attempted to support through its Tribal lands Lifeline program – low-income consumers living on Tribal lands.⁴⁰² We therefore agree with commenters that including FDIPIR as a qualifying program will allow more low-income residents on Tribal lands to receive Lifeline support, which will further the Commission’s goal of increasing access to telecommunications services by low-income residents of Tribal lands.

156. *Designation of Off-Reservation Areas for Tribal Support.* We next adopt the proposal in the *Lifeline and Link Up NPRM* to establish a process for Tribal governments to seek designation of off-reservation areas as Tribal lands for purposes of determining eligibility for Tribal lands Lifeline support. This process will apply to Tribal governments seeking qualification for enhanced Lifeline support for Tribal communities whose land does not meet the definition of “reservation” contained in section 54.400(e) of our rules.

157. In the *2000 Tribal Lifeline Order*, the Commission limited the availability of enhanced low-income program support to qualified low-income consumers living on Tribal lands, which it defined to include both reservations and near reservation areas. The Commission defined near reservation as “those areas or communities adjacent or contiguous to reservations,” and noted that other federal programs supporting Tribes have generally considered such areas to be Tribal lands.⁴⁰³ Shortly after the adoption of the *2000 Tribal Lifeline Order*, however, the Commission became aware that its definition of near reservation potentially encompassed wide areas in which communities do not face the economic and geographic barriers faced by communities on reservations.⁴⁰⁴ Thus, in the *Near Reservation Stay Order*, the Commission stayed the implementation of the enhanced support rules set forth in the *2000 Tribal Lifeline Order* as applied to “qualifying low-income consumers living near reservations,” and sought comment on alternative methods of reaching low-income Tribal consumers living off-reservation.⁴⁰⁵

158. We are concerned that the current definition of Tribal lands and the associated stay have precluded many potentially eligible low-income consumers from receiving Tribal lands Lifeline support as intended by the *2000 Tribal Lifeline Order*. Although they reside in off-reservation areas, such consumers may face the same levels of poverty, geographic isolation, and lack of access to telecommunications services faced by communities on reservations.⁴⁰⁶ We also recognize the Commission’s concerns, as discussed in the *Near Reservation Stay Order*, about the potential over-inclusiveness of the current definition of Tribal lands. Accordingly, we adopt a process today that will enable us to more effectively target Lifeline support to qualified residents of Tribal lands.

⁴⁰² Commenters generally supported the addition of FDIPIR as a qualifying program for residents of Tribal lands. See, e.g., GRTI Comments at 11-12 (noting that consumers who could otherwise participate in SNAP but choose to participate in FDIPIR may be unnecessarily excluded from Lifeline eligibility, and that cultural and language barriers faced by Tribal members when attempting to qualify for federal aid programs exacerbate the problem of inadvertent disqualification); YourTel Comments at 9-10 (noting that one state, Oklahoma, already includes FDIPIR in its list of qualifying programs, and that it supported making the same change on the federal level); see also *USDA FDIPIR Letter*, at 1; CenturyLink Comments at 14.

⁴⁰³ *2000 Tribal Lifeline Order*, 15 FCC Rcd at 12218, para. 17.

⁴⁰⁴ For example, well-served population centers such as Phoenix, Arizona and Sacramento, California were considered near reservation areas. *2003 Tribal Lifeline Order*, 18 FCC Rcd at 10965, para. 13.

⁴⁰⁵ *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Order and Further Notice of Proposed Rulemaking, CC Dkt. No. 96-45, 15 FCC Rcd 17112, 17113-15, paras. 2-6 (2000) (*Near Reservation Stay Order*).

⁴⁰⁶ See, e.g., LCCHR Comments at 9-10 (noting the low penetration rates for American Indians for basic telephone service and asserting that the Commission should direct support toward Tribal lands and Tribal members with low subscribership rates).

159. Under the rule we adopt today, a Tribal government may seek designation of off-reservation lands as Tribal lands by filing a petition for designation with the Commission's Wireline Competition Bureau and Office of Native Affairs and Policy, to whom we jointly delegate the authority to resolve such petitions. The Office of Native Affairs and Policy will also be responsible for initiating consultation with each Tribal government submitting a designation petition. In establishing this process allowing Tribal governments to designate off-reservation areas as Tribal lands, we rely on the precedent articulated by the Commission in establishing a similar process for radio stations seeking to serve Tribal lands.⁴⁰⁷ By making individualized designations of off-reservation Tribal lands, the Commission will more effectively reach those Tribal consumers and communities that are most in need while at the same time reducing over-inclusiveness that could expand eligibility beyond what is appropriate to serve our goal of increasing access to telecommunications services on Tribal lands.

160. A petition for designation of off-reservation lands as Tribal lands for purposes of qualifying for Tribal lands Lifeline support must be formally made by a duly authorized official of a federally recognized Tribe and must establish good cause for such designation. The requirement that designation be formally requested by a duly authorized official of a federally recognized Tribe is consistent with our requirement that only residents of Tribal lands may qualify for enhanced low-income support, based on the government-to-government relationship between Tribal governments and the federal government.⁴⁰⁸ A request for designation must provide sufficient evidence of: (1) a nexus between the area or community and the Tribe; and (2) a description of how Tribal lands Lifeline support to the designated area would aid the Tribe in serving the needs and interests of its citizens and further the Commission's goal of increasing telecommunications access on Tribal lands.

161. To satisfy the first requirement, a Tribal government seeking designation for off-reservation Tribal lands must submit evidence probative of a connection between a defined community or area and the Tribe itself. A designation petition should explain that the communities or areas associated with the Tribe do not fit the definition of Tribal lands contained in section 54.400(e) of the Commission's rules. Geographically identifiable factors, such as evidence that the area is one to which the Tribe delivers services to its citizens or to which the federal government delivers services specifically intended for Tribal members, would be probative.⁴⁰⁹ Evidence that a Tribe has a defined seat, such as a headquarters or office, in combination with evidence that Tribal citizens live and/or are served by the Tribal government in the immediate environs of such a government seat, would also be probative of a nexus between that community and the Tribe. A Tribal government might also provide a showing under the standard enunciated in section 83.7(b)(2)(i) of Part 25 of the Code of Federal Regulations,⁴¹⁰ that more than 50 percent of Tribal members live in a geographical area exclusively or almost exclusively

⁴⁰⁷ See *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, MB Dkt. No. 09-52, RM-11528, Second Report and Order, First Order on Reconsideration, and Second Further Notice of Proposed Rulemaking, 26 FCC Rcd 2556, 2561-63, paras. 8-11 (2011) (*Rural Radio Second Report and Order*).

⁴⁰⁸ See generally *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, Policy Statement, 16 FCC Rcd 4078 (2000) (*Tribal Policy Statement*). See also *2000 Tribal Lifeline Order*, 15 FCC Rcd at 12213-14, para. 5.

⁴⁰⁹ For example, areas to which the federal government provides services to Tribal members could include federal service areas used by the Indian Health Service, Department of Energy, or Environmental Protection Agency. Probative evidence might also include evidence of Census Bureau-defined Tribal service areas used by agencies such as the Department of Housing and Urban Development. See *Rural Radio Second Report and Order*, 26 FCC Rcd at 2561, para. 7.

⁴¹⁰ 25 C.F.R. § 83.7(b)(2)(i). Title 25 encompasses the responsibilities of the Bureau of Indian Affairs, and Part 83 is entitled "Procedures for Establishing that an American Indian Group Exists as an Indian Tribe."

composed of members of the Tribe.⁴¹¹ Additionally, Tribal governments might provide other indicia of community, such as Tribal institutions (e.g., hospitals or clinics, museums, businesses) or activities (e.g., conferences, festivals, fairs).⁴¹² The designation petition should also detail, pursuant to the second requirement adopted in section 54.412 of our rules, how the provision of Tribal lands Lifeline support to the community or area would aid the Tribe in serving the needs of its community and thus would further the goals of the enhanced Lifeline program.

162. The Tribal government must also clearly describe a defined area for the off-reservation lands for which it seeks designation as Tribal lands.⁴¹³ This requirement is consistent with the purposes of enabling Tribes to serve their citizens, to perpetuate Tribal culture, and to promote self-government.⁴¹⁴ In addition, the showing must demonstrate the Tribal character of the area or community for which Tribal lands designation is sought. The need for such a demonstration is in line with the purposes underlying Tribal lands enhanced low-income support, namely to promote telecommunications deployment and subscribership on Tribal lands, consistent with our obligations under the historic federal trust relationship between the federal government and federally recognized Indian Tribes to encourage Tribal sovereignty and self-governance.⁴¹⁵ We note that it is the express intent of the Commission that any such designation shall be used solely for the Lifeline program and shall not be used for other purposes – such as eligibility for the Tribal Mobility Fund established in the *USF/ICC Transformation Order and FNPRM*.

163. In conjunction with this action, we also adopt the proposal in the *Lifeline and Link Up NPRM* to remove the term and definition of “near reservation” from section 54.400(e) of our rules. We acknowledge that leaving the language in the rules after staying its implementation may have caused confusion. We also acknowledge that the term “near reservation” was overly broad, designating large areas that do not possess characteristics warranting Tribal lands low-income support. We expect that the designation process we adopt today will eliminate any lingering confusion associated with this term and, consistent with the *2000 Tribal Lifeline Order*, will enable the Commission to target Tribal lands Lifeline support to underserved consumers living off of reservations. We do not anticipate the removal of the near reservation language from our rules to have any adverse impact on consumer eligibility for Tribal lands support. Moreover, the record supports the adoption of a process for designating off-reservation areas as Tribal lands in lieu of maintaining or modifying the term “near reservation,”⁴¹⁶ and we therefore make that change today.

164. *Self-certification of Tribal land residence.* We also adopt the proposal in the *Lifeline and Link Up NPRM* to clarify that, pursuant to section 54.410 of the Commission’s amended rules, consumer self-certification is sufficient to meet the Tribal lands residency requirement for enhanced Lifeline support. In 2008, Qwest Communications (Qwest) (now known as CenturyLink) sought review of a USAC decision which found that Qwest provided enhanced Lifeline support to subscribers who did not

⁴¹¹ See *Rural Radio Second Report and Order*, 26 FCC Rcd at 2562, para. 9.

⁴¹² *Id.*

⁴¹³ See *Rural Radio Second Report and Order*, 26 FCC Rcd at 2586, para. 58 (noting that Tribal lands may be very small or irregularly shaped).

⁴¹⁴ *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2814, para. 136.

⁴¹⁵ See *Tribal Policy Statement*, 16 FCC Rcd at 4080-81; *2000 Tribal Lifeline Order*, 15 FCC Rcd at 12213-14, para. 5.

⁴¹⁶ Commenters generally found this proposal to be non-controversial. Specifically, CenturyLink expressed its support for the implementation of a new designation process for off-reservation Tribal lands, adding that once the process is in place, the Commission should maintain a list of Tribal lands designated under the process. CenturyLink Comments at 14.

reside on eligible Tribal lands and failed to provide enhanced Lifeline support to subscribers who were eligible residents of Tribal lands.⁴¹⁷ Qwest argued that it had secured signed documents from consumers self-certifying their participation in a qualifying program and residence on a reservation, and had thus fulfilled its obligation to demonstrate the consumers' residence on Tribal lands as required by Commission rules.⁴¹⁸ The Commission sought comment on the Qwest Petition in 2008,⁴¹⁹ and commenters generally urged the Commission to continue allowing low-income consumers to self-certify to their residency on Tribal lands.⁴²⁰

165. In the *Lifeline and Link Up NPRM*, the Commission proposed to eliminate the option for consumers to self-certify to their program-based eligibility for Lifeline support, but to maintain a rule allowing consumers to self-certify to their residence on Tribal lands.⁴²¹ The Commission noted that there is consensus among ETCs and Tribes that Tribal addresses are often difficult, if not impossible, to determine, and that requiring ETCs to document Tribal residency would significantly undermine the goal of increasing access to telecommunications services on Tribal lands by discouraging carriers from serving Tribal communities.⁴²²

166. As proposed in the *NPRM*, we clarify that, pursuant to section 54.410 of the Commission's amended rules, consumer self-certification is sufficient to meet the residency requirement of Tribal lands Lifeline support.⁴²³ Thus, a low-income consumer applying for Tribal lands low-income support must certify upon program enrollment that he or she is an "eligible resident of Tribal lands," as defined in section 54.400(e) of our rules. The record indicates that residential addresses are frequently non-existent on Tribal lands and, where present, often differ significantly from residential addresses off Tribal lands.⁴²⁴ Further, the record strongly suggests that imposing an address verification requirement for Tribal land residence would be unduly cumbersome and counterproductive to our goal of increasing access to telecommunications services on Tribal lands.⁴²⁵ We therefore agree with commenters, who urge

⁴¹⁷ *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2815, para. 138; see also *Request for Review by Qwest Communications International, Inc. of the Decision of the Universal Service Administrator*, WC Dkt. No. 03-109 (filed Apr. 25, 2008) (*Qwest Petition*).

⁴¹⁸ *Qwest Petition* at 6-9.

⁴¹⁹ *Comment Sought on Qwest Request for Review of a Decision of the Universal Service Administrative Company*, WC Dkt. No. 03-109, Public Notice, 23 FCC Rcd 7845 (Wireline Comp. Bur. 2008).

⁴²⁰ *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2816, para. 139 (citing AT&T Qwest Petition Comments, WC Dkt. No. 03-109 (filed Jun. 16, 2008); USTelecom Association Qwest Petition Comments, WC Dkt. No. 03-109 (filed Jun. 16, 2008); Alltel Communications, LLC Qwest Petition Reply Comments, WC Dkt. No. 03-109 (filed Jul. 1, 2008); Rural Cellular Corporation Qwest Reply Comments, WC Dkt. No. 03-109 (filed Jul. 1, 2008); SBI Qwest Petition Reply Comments, WC Dkt. No. 03-109 (filed Jul. 1, 2008)).

⁴²¹ *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2816-17, para. 141.

⁴²² See *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2816, para. 139.

⁴²³ We also grant Qwest's April 2008 request for review of the USAC audit finding. We find that Qwest was compliant with the Commission's Lifeline rules that existed at the time, as clarified herein.

⁴²⁴ See, e.g., SBI Comments at 14-16. SBI cited a letter to the Commission from the Navajo Nation describing the absence of addressing systems on Tribal lands and the significant challenges that the absence has posed to the provision of basic services like mail and emergency medical dispatch. See SBI Comments at 14-15. SBI noted that when a consumer provides an address commonly seen in Tribal communities such as "5 MI NE OF ROCKWELL STORE," reliable verification of the address is all but impossible. SBI Comments at 15. See also NNTRC Jan. 20 *ex parte* Letter at 5.

⁴²⁵ See, e.g., CenturyLink Comments at 15; SBI Comments at 14-16; USTelecom Comments at 6-7. Because we have already addressed the proposal on self-certification as to income and program participation above, we limit our (continued....)

us to keep the rule as is.

E. Electronic Signature and Interactive Voice Response Systems

167. *Background.* The Commission's Lifeline and Link Up rules require subscribers or potential subscribers to the program to sign documents certifying to program eligibility in order to obtain the service. Sections 54.409(c) and (d) of our rules, for example, require ETCs to "obtain [a] consumer's signature on a document certifying under penalty of perjury" that the consumer meets certain Lifeline eligibility requirements.⁴²⁶ Similarly, section 54.410 requires ETCs to verify their subscribers' continued eligibility by having subscribers self-certify under penalty of perjury to certain requirements relevant to continued eligibility.⁴²⁷ In the *NPRM*, the Commission proposed to allow consumers to electronically sign the "penalty of perjury" requirements of sections 54.409(c), 54.409(d), and 54.410 of the Commission's rules and sought comment on the rules defining and guidelines for accepting electronic signatures for Lifeline enrollment, certification, and verification.⁴²⁸ The Commission also sought comment on whether interactive voice response (IVR) systems, which record and save an applicant's certification of eligibility over the telephone, is an acceptable method to verify a consumer's signature under sections 54.409(c), 54.409(d), and 54.410 of the Commission's rules.⁴²⁹

168. *Discussion.* We clarify that ETCs may obtain electronic signatures from potential or current subscribers certifying eligibility to receive support under "penalty of perjury" pursuant to section 54.410 of the Commission's rules. The Electronic Signatures in Global and National Commerce Act (E-Sign Act)⁴³⁰ and Government Paperwork Elimination Act⁴³¹ establish that an electronic signature, defined by the E-Sign Act as an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record, has the same legal effect as a written signature.⁴³² The E-Sign Act grants federal agencies, including the Commission, the authority to issue rules and guidance in accordance with section 101 of the E-Sign Act, which states that "a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form," before specifying further requirements regarding verifiability, accuracy, and consumer consent.⁴³³ Because our Lifeline rules make no distinction between electronic and written signatures, the operative effect of the E-Sign Act is to permit the use of electronic signatures for the purposes of certifying eligibility to receive support under penalty of perjury.⁴³⁴ The record supports the use of electronic signatures by consumers as a way to

(Continued from previous page)

discussion in this section to the proposal on self-certification as to residence on Tribal lands. *See supra* section VI.C (Certification of Consumer Eligibility).

⁴²⁶ *See* 47 C.F.R. § 54.409(c), (d).

⁴²⁷ *See* 47 C.F.R. § 54.510.

⁴²⁸ *See NPRM*, 26 FCC Rcd at 2839, para. 224.

⁴²⁹ *See id.* at 2839, para. 225. In addition, one ETC has filed a request with the Commission seeking permission to enroll Lifeline consumers online and by telephone using an IVR. *See* Letter from Peter Lurie, Virgin Mobile USA, L.P., to Sharon Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission, WC Dkt. No. 09-197 (filed March 4, 2010).

⁴³⁰ *See* 15 U.S.C. §§ 7001-7004 (2006).

⁴³¹ *See* 44 U.S.C. §§ 3501-20 (2006).

⁴³² *See* 15 U.S.C. §§ 7001-7004 (2006); 44 U.S.C. §§ 3501-20 (2006).

⁴³³ *See* 15 U.S.C. §§ 7001-7004 (2006).

⁴³⁴ One commenter agrees with our analysis: Comptel states that electronic signatures are already allowed under the E-Sign Act, which includes IVRs. COMPTTEL Comments at 22. Furthermore, we interpret "document" in 47 C.F.R. (continued....)

simplify the enrollment process.⁴³⁵ As such, we find that it is in the public interest to clarify that electronic signatures may be relied upon for purposes of the Lifeline program rules, including the certification requirements adopted herein. We also determine for purposes of annual certifications, ETCs may rely upon text messages from Lifeline consumers when such communications is received in response to the annual certification request from the consumer's Lifeline-supported phone number.

169. Though ETCs may now rely on electronic signatures, including IVR recordings, we note that our recordkeeping requirements remain unchanged.⁴³⁶ Indeed, our requirements, as written, are not affected by the inclusion of electronic records; ETCs are still required to maintain records to document compliance with all Commission and state requirements governing the Lifeline program, including copies of text messages for annual certifications.⁴³⁷ Nevertheless, we adopt a rule to clarify that an electronic signature is an acceptable method to verify a consumer's signature under section 54.410 of the Commission's rules. While we make clear that ETCs may rely on electronic signatures to obtain a consumer's signature on a document certifying under penalty of perjury, ETCs must keep accurate and verifiable records and must comply with the certification requirements set forth in section VI.C, above.

F. Automatic and Coordinated Enrollment

170. *Background.* In this section, we limit automatic enrollment in the program by state agencies and, at the same time, encourage the use of coordinated enrollment. Coordinated enrollment is a mechanism that permits but does not compel consumers to enroll in Lifeline and Link Up at the same time they enroll in a qualifying public assistance program.⁴³⁸ Coordinated enrollment is distinguishable from "automatic" or "automated" enrollment, which entails a state or authorized agent automatically enrolling an eligible consumer in Lifeline without the consumer submitting a Lifeline application or expressly authorizing the enrollment.⁴³⁹ In automatic enrollment programs, an eligible consumer is automatically enrolled in a Lifeline program without their affirmative consent.⁴⁴⁰ The Texas PUC matches ETCs' current subscribers' names to eligibility data from state social services databases.⁴⁴¹ Eligible subscribers are automatically enrolled in the Lifeline program of their carrier (if that carrier is an ETC). The Lifeline discount is then provided to the subscriber unless they opt out after having received notification of their enrollment. Other states have similar processes.⁴⁴²

(Continued from previous page)

§ 54.409(c) and (d) to constitute a record that may be saved pursuant to the record keeping requirements set forth in 47 C.F.R. § 54.410.

⁴³⁵ See, e.g., Amvensys Comments at 9; CenturyLink Comments at 21-22; COMPTEL Comments at 22; Emerios Comments at 17; GCI Comments at 52; NALA/PCA Comments at 6; Solix Comments at 3; YourTel Comments at 14.

⁴³⁶ See 47 C.F.R. § 54.417.

⁴³⁷ See *id.*

⁴³⁸ See *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2831, para 199. The Commission and its staff have long encouraged coordinated enrollment as a way to improve the efficiency of the low-income program. In 2004, for example, the Commission encouraged states to implement coordinated enrollment. See *2004 Lifeline and Link Up Order and FNPRM*, 19 FCC Rcd at 8318, para. 25.

⁴³⁹ See *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2831-32, para 200 ("Unlike automatic or automated enrollment, coordinated enrollment requires eligible consumers to affirmatively choose to enroll in the Lifeline program.").

⁴⁴⁰ See *id.*

⁴⁴¹ See Solix Comments at 3-4.

⁴⁴² See, e.g., NY PSC Comments.

171. In 2010, the National Broadband Plan recommended that the Commission encourage state agencies responsible for Lifeline and Link Up to streamline benefit enrollment and suggested the use of unified online applications for social services.⁴⁴³ In the *2010 Recommended Decision*, the Joint Board recommended that coordinated and automatic enrollment should be encouraged as a best practice,⁴⁴⁴ but also recommended that the Commission not mandate coordinated enrollment before seeking comment on the various administrative, technological and funding issues of such a requirement.⁴⁴⁵ Thus, in the *Lifeline and Link Up NPRM*, the Commission suggested that coordinated enrollment be encouraged as a best practice by the states and sought comment on the steps that the Commission could take to further facilitate coordinated enrollment.⁴⁴⁶ The Commission sought comment on the overall costs and benefits of coordinated enrollment as the Joint Board recommended.⁴⁴⁷

172. *Discussion.* We limit the ability of states and their agents to automatically enroll a consumer in Lifeline without the consumer's express authorization in order to protect the Fund against duplicative Lifeline support, increase adherence to consumer certification rules, and ensure that all ETCs have an opportunity to compete for subscribers. At the same time, we agree with the Joint Board that coordinated enrollment has substantial benefits and should be facilitated.

173. While automatic enrollment programs increase consumer enrollment in Lifeline, some features of these programs may have the unintended consequences of excessively burdening the Fund, may undermine Commission objectives to reduce waste and prevent duplicative support, and limit ETCs' opportunities to compete for consumers.⁴⁴⁸ For example, in one state, Verizon must apply the Lifeline discount to any existing Verizon wireline consumer identified as receiving benefits from the that state's Office of Temporary Disability Assistance.⁴⁴⁹ The consumer subsequently receives a letter from the state explaining that they have been enrolled in Verizon's Lifeline program and must opt-out if they do not want the discount. A substantial number of consumers will likely not exercise that option and stay with the default selection regardless of their actual preference or whether they are receiving Lifeline from another provider.⁴⁵⁰ Not only can competition among ETCs for low-income consumers be frustrated by automatic enrollment processes that favor a single provider, but this process may lead to duplicative claims. For example, a Verizon wireline subscriber that is automatically enrolled in Verizon's Lifeline program and given the Lifeline discount may already be receiving Lifeline support from a wireless

⁴⁴³ NATIONAL BROADBAND PLAN at 173.

⁴⁴⁴ In its recommended decision, the Joint Board used the term "automatic" or "automated" enrollment to mean both automatic enrollment and coordinated enrollment as defined in this order. See *2010 Joint Board Recommended Decision* at n.26 (citing LIFELINE ACROSS AMERICA WORKING GROUP, REPORT OF THE FCC/NARUC/NASUCA WORKING GROUP ON LIFELINE AND LINK-UP: "LIFELINE ACROSS AMERICA" 6-9 (2007), available at <http://www.lifeline.gov/LLLUReport.pdf> (WORKING GROUP REPORT)).

⁴⁴⁵ See *2010 Joint Board Recommended Decision* at paras 18-22.

⁴⁴⁶ See *Lifeline and Link Up NPRM*, FCC Rcd at 2832-33, paras. 201-04.

⁴⁴⁷ See *id.* at 2833, para 204.

⁴⁴⁸ See 47 U.S.C. § 254(d) ("A State may adopt regulations to provide for additional definitions and standards to advance universal service within that State only to the extent that such regulations...do not rely on or burden Federal universal support mechanisms.").

⁴⁴⁹ See NY PSC Comments at 10.

⁴⁵⁰ See *Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, et al., Report and Order and Further Notice of Proposed Rulemaking, WC Dkt. No. 04-36 et al., para 44 (2007) (noting that customers may inadvertently provide consent to share private information if consent is provided unless the consumer affirmatively opts out).